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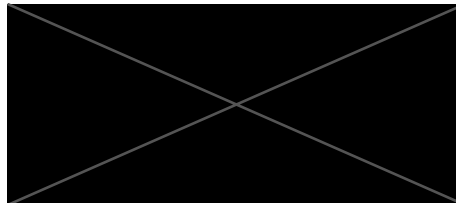
REPORTABLE

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT

CRIMINAL PETITION No.986/2025

Abhishek Kar



Petitioner

– *VERSUS* –

The State of Assam

Rep By The PP, Assam

-----Respondent

B E F O R E

HON'BLE MR. JUSTICE PRANJAL DAS

Date on which judgment is reserved: **10.12.2025**

Date of pronouncement of judgment: **09.02.2026**

Whether the pronouncement is of the **N/A**

Operative part of the judgment **:**

Whether the full judgment has been

Pronounced **:Yes**

JUDGMENT & ORDER (CAV)

(Pranjal Das, J.)

1. Heard Mr. H. R. A. Choudhury, learned Senior Counsel as well as Mr. K. Baishya, learned Additional Public Prosecutor, Assam.

2. The instant criminal petition has been filed by the petitioner, namely, **Abhishek Kar**, invoking the powers under Section 528 B.N.S.S. seeking quashing of **CID Cyber P.S. Case No. 01 of 2025** under Section 196(1), 197(1), 353(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 (herein after B.N.S.S), read with Section 67 of the Information Technology Act, read with Section 4 of the Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015. The aforesaid police case was registered based on an FIR dated 11.01.2025 lodged by Inspector Rakesh Kalita at the Cyber Police Station, CID, with the allegations that the petitioner through YouTube channel of one Ms. Riya Upreti published a video, where, he commented against Assamese women in Assam, mentioning that in Assam there is a place where girls practice black magic, witchcraft and can convert human beings into goats and other animals and later, at night, they can convert them back into human beings and establish physical relation to fulfill their lust.

3. It is alleged that such remarks are derogatory against Assamese women and were made with malicious intent to outrage the modesty of Assamese women and that it also amounts to spreading misinformation about the Assamese society. It is alleged that the petitioner with the intention of criminal conspiracy had attempted to promote malicious and disrespectful information about Assamese society. It is stated that subsequently when the controversy

was brought to the notice of the petitioner, he issued an apology, marking, the police authorities as well.

4. It appears that when the instant criminal petition was filed the investigation was going on in the same case, but in the meantime, the investigation was completed resulting in a charge-sheet against the petitioner vide charge-sheet No.01/2025, dated 08.09.2025.

5. The charge-sheet has been filed against the petitioner under the penal provisions of Sections 196(1), 197(1), 353(2) of BNS read with Section 67 of the Information Technology Act and Section 4 of The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015 (herein after referred to as the Assam Witch Hunting Act).

6. The learned counsel for the petitioner supporting the contentions made in the petition submits that despite issuing an apology, a case has been registered against the petitioner.

7. It is submitted that the petitioner had absolutely no intention to hurt the feelings of Assamese people or Assamese women and he has not cast any aspersions constituting any offence under the Assam Witch Hunting Act.

8. It is submitted that he has been falsely and maliciously prosecuted. Hence, he is seeking the quashing of the criminal case by this Court, in exercise of powers under Section 528 BNS. The learned counsel for the petitioner in support of his contention has relied upon the following decisions:-

(i) **Amish Devgan Vs. Union of India and Ors.** reported in **(2021) 1 SCC,1 (2021) 1 SCC 1**

(ii) **Manchu Mohan Babu Vs. State of Andhra Pradesh & Another** reported in **Criminal Appeal No. 3298 of 2025**,

(iii) **Mamta Shailesh Chandra Vs. State of Uttarakhand and Ors.** reported in **2024 SCC OnLine SC 136**,

(iv) **Shiv Prasad Semwal Vs. State of Uttarakhand and Ors.** reported in **2024 LiveLaw (SC) 251**,

(v) **Imran Pratapgadhi Vs. State of Gujarat and Another** reported in **2025 SCC OnLine SC 678**.

9. On the other hand, Mr. K. Baishya, the learned Additional P.P. appearing on behalf of the State submits that the ingredients of offences were made out and therefore, the case has been registered. The investigation has also found incriminating materials and that the petitioner unjustifiably cast aspersions and imputations upon the local community and tarnished the reputation and therefore, he has been rightly prosecuted.

10. The scanned case record comprising the charge-sheet and its accompanying materials have been called for and received. I have perused the criminal petition, the FIR, the charge-sheet and the accompanying materials.

12. I have considered the submissions of the learned counsel for the petitioner and the learned Additional P.P. for the State.

13. I have also perused the decisions cited by the petitioner counsel in support of his contentions.

14. Before proceeding further, the contents of the penal provisions under which the petitioner has been prosecuted may be looked at. Accordingly, the

said penal provisions are hereby reproduced herein.

“196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-(1) Whoever-

(a) by words, elther spoken or written, or by signs or by visible representations or through electronic communication or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity; or

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

197. Imputations, assertions prejudicial to national integration.-(1) Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise,-

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India; or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied, or deprived of their rights as citizens of India; or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons; or

(d) makes or publishes false or misleading information, jeopardising the sovereignty, unity and integrity or security of India, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

353. Statements conducing to public mischief-

(2) Whoever makes, publishes or circulates any statement or report containing false information, rumour or alarming news, including through electronic means, with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

15. In **Shiv Prasad Semwal (supra)**, it has been held in para 26, 29 and 32 as follows:-

"26. From a bare reading of the language of Section 153A IPC, it is clear that in order to constitute such offence, the prosecution must come out with a case that the words 'spoken' or 'written' attributed to the accused, created enmity or bad blood between different groups on the ground of religion, race, place of birth, residence, language, etc., or that the acts so alleged were prejudicial to the maintenance of harmony.

29. In the case of Manzar Sayeed Khan v. State of Maharashtra¹, this Court held that for applying Section 153A IPC, the presence of two or more groups or communities is essential, whereas in the present case, no such groups or communities were referred to in the news article.

32. In the case of State of Haryana v. Bhajan Lal², this Court examined the principles governing the scope of exercise of powers by the High Court in a petition under Article 226 of the Constitution of India and under Section 482 CrPC seeking quashing of criminal proceedings and held as follows:—

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226

or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. I find that the penal provisions under which the case was registered are the same penal provisions, under which, the charge sheet was submitted after completion of investigation.

16.1 **Mamta Shailesh Chandra (supra)**, it was held in para 3 and 4 as follows:-

“3. We do not agree with the reasoning of the High Court for dismissing the writ petition of the appellant, having regard to the ratio of the judgment of this Court delivered on 04.07.2011 in the case of Joseph Salvaraj A. vs. State of Gujarat & Ors. reported in 2011 (7) SCC 59. That was a case arising from the quashing plea of an F.I.R., where charge-sheet was submitted after institution of the petition under Section 482 of the Code of Criminal Procedure 1973. A Coordinate Bench of this Court opined that even if the charge sheet had been filed, the Court could still examine if offences alleged to have been committed were prima facie made out or not on the basis of the F.I.R., charge-sheet and other documents.

4. We, accordingly, set aside the impugned order and remand the matter to the High Court. Let the High Court hear the criminal writ petition on merit. We also direct, on the basis of materials disclosed, that the appellant shall not be arrested for the offences alleged in the said F.I.R. until the High Court decides the criminal writ petition on merit, unless a case is made out before the High Court that the appellant's detention is necessary on account of any development subsequent to filing of the charge-sheet. We issue this direction in exercise of our jurisdiction under Article 142 of the Constitution of India.”

17. Therefore, in this proceeding under Section 528 of BNSS, the merits of the charge-sheet can also be looked into.

18. The alleged offending statement of the petitioner which led to registration of the case may be reproduced herein below:-

“56:46 Abhishek: So, there are practices happening, which have been happening for a long time, and maybe people won't believe them, but all these things are happening. For example, if you go to Assam, there's a place where they say the girls of that village have such powerful spiritual abilities that they have the power to...As a human, you go there, and they can convert you into a goat or any other animal, and at night, they turn you back into a human and have intercourse with you. Why? Because there are a lot of tantric practices whose roots come from here. In fact, if you Google it, you will find that there is a village where this happens. Well, now there are a lot more educated people there. In fact, the story goes that once when a whole army from the Mughal Sultanate came there, it disappeared overnight. They couldn't even attack. They were able to attack everywhere, but not at that place. I think it was in Mayang, or somewhere like that. So, there are places where dark things happen. So, as you asked, are billionaires spiritual? If Steve Jobs is visiting Neem Karoli Baba, if Mark Zuckerberg is visiting Neem Karoli Baba, if Mukesh Ambani is doing a big charity at a South Indian temple, if Amitabh Bachchan is doing a large charity at a South Indian temple, if Nita Ambani is reciting something during a match, I think we have enough evidence to say that billionaires do practice this. Open your eyes. You work for 15 hours, and they work too.”

19. In the context of the aforesaid offending statement, I have perused the ingredients of Section 197 of BNS, which pertains to imputations or assertions prejudicial to national integration.

20. The alleged offending statement of the petitioner clearly does not attract the ingredients of Section 197 of BNS. Further, to attract an offence under Section 196 of BNS also, the act of the accused has to be of such a nature that it promotes enmity between two communities on the grounds of religion, race, place of birth, language, etc.

21. In this context, a reference may be made to the leading case of ***Bilal Ahmed Kaloo Vs. State of A.P. (1997) 7 SCC 431*** and the relevant paragraphs may be reproduced herein below:-

“11. This Court has held in Balwant Singh v. State of Punjab [(1995) 3 SCC 214 : 1995 SCC (Cri) 432] that mens rea is a necessary ingredient for the offence under Section 153-A. Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words “with intent to create or promote or which is likely to create or promote” as used in that sub-section.

15. The common feature in both sections being promotion of feeling of enmity, hatred or ill will “between different” religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.”

22. The aforesaid offending statement of the petitioner, in my considered opinion, cannot be said to be one promoting enmity between two communities vis-à-vis the ingredients of Section-196 and the law laid down in **Bilal Ahmed Kaloo (supra)**. Similarly, the statement of the accused/petitioner taken on its face value cannot also be said to be one made with the intention to generate hatred or ill-will between different communities based on religion, race, language, caste, etc.

23. Section 67 of the I.T. Act criminalizes the Act of publishing or transmitting obscene material in electronic form. In my considered opinion, the statement of the petitioner taken on its face value cannot also be said to be attracting the ingredients of Section-67 of the I.T. Act. In the statement, the petitioner has made some controversial remarks, but the same does not necessarily amount to obscenity.

24. Section 4 of the **Assam Witch Hunting Act**, may be reproduced herein below:-

“Whoever,-

(i) identifies, calls, stigmatizes, defames or accuses either by words, signs, indications, conducts, actions or any other manner any person as witch,

{ii} instigates or aids or abets any such acts

mentioned in clause {i} above, shall be punished with imprisonment for a term which shall not be less than three years but can extend up to a term of seven years and with fine, which shall not be less than Rs.50,000/- but which may extend to Rs.5,00,000/-."

25. This provision of the Act criminalizes the act of identifying, calling, stigmatizing or defaming any person as a witch and it also includes within its ambit the act of instigating or abetting such acts. The term 'witch' is defined in Section-2(g) as follows:-

“(g) "witch" means any person who has been supposedly identified, called, stigmatized, defamed or accused as Daini, Daina, Dakini, Dakan, Bhoot, Bhootuni, or any other such name by person or persons under the grip of unrealistic and unfounded impression that such person has the power to harm anyone or society at large, in any manner;”

26. Going back to the offending statement of the petitioner, once again, I am of the considered view that his statement cannot be said to be attributing any label of witch or any label of such nature upon the persons he was referring to.

27. In my considered opinion, one of the important ingredients of the definition in Section 2(g) is that an impression is given that such person called a 'witch' has the power to harm anyone in the society at large in any manner. Such an element is missing, in my considered view, in the statement of the petitioner.

28. Thus, upon analyzing the statement of the petitioner, vis-à-vis the ingredients of the penal provisions under which the case has been registered

and charge-sheeted - I come to the **considered finding** that the statement of the petitioner taken on its face value and its entirety do not attract the ingredients of the said penal provisions.

29. Therefore, there was no justification for registering the case under the said penal provisions and as a necessary corollary, there is also no justification in the filing of the charge-sheet against the petitioner under the said penal provisions.

30. Resultantly, this criminal petition is allowed and the entire criminal proceedings - being **CID Cyber P.S. Case No. 01 of 2025** under Section 196(1), 197(1), 353(2) of B.N.S and charge-sheet No.01/2025 dated 08.09.2025 {corresponding Sessions Case No.180/2025} are hereby **quashed**.

31. The criminal petition stands **allowed** and **disposed** of on the aforesaid terms.

JUDGE

Comparing Assistant